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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,380	06/23/2005	Isador H Lieberman	CCF-6389PCT2/US	2534
26294	7590	08/27/2007	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			WOODALL, NICHOLAS W	
		ART UNIT	PAPER NUMBER	
		3733		
		MAIL DATE	DELIVERY MODE	
		08/27/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/540,380	LIEBERMAN, ISADOR H
	<b>Examiner</b>	<b>Art Unit</b>
	Nicholas Woodall	3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 June 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,8-11 and 18-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 18 and 19 is/are allowed.
- 6) Claim(s) 1-4,8-11,20,22 and 23 is/are rejected.
- 7) Claim(s) 21 and 24-28 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 June 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is in response to applicant's amendment received on 06/08/2007.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

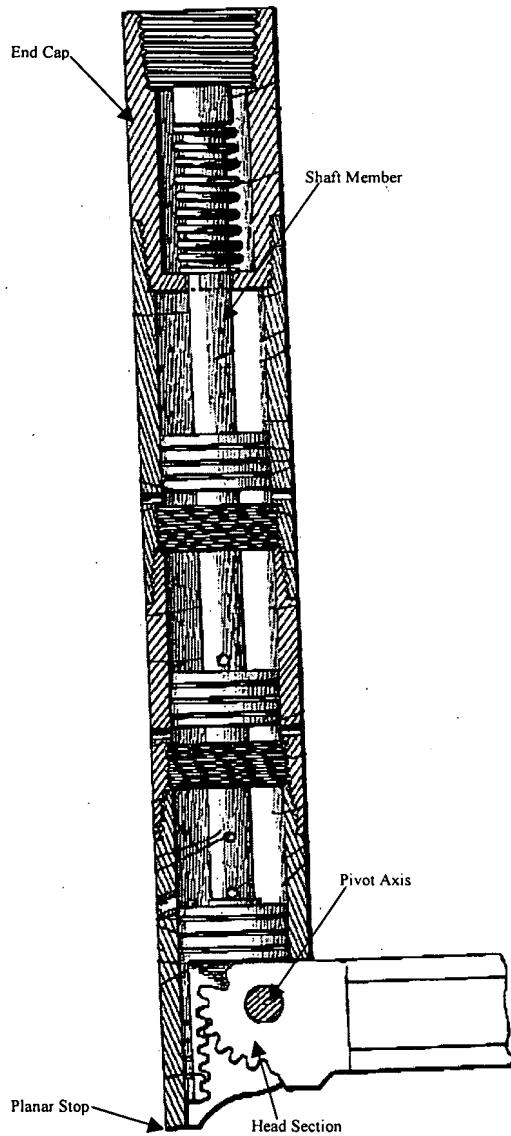
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 8-11, 20, 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Boynton (U.S. Patent 1,607,662).

Regarding claims 1, 8, 20, 22, and 23, Boynton discloses a device comprising an elongate member and a means for articulating the head section relative to the tubular portion of the elongate member. The elongate member includes a central axis, a tubular portion, a proximal end, and a distal end. The tubular portion extends between the proximal end and the distal end. The distal end includes an articulatable head section capable of being pivoted between a plurality of angular positions about a pivoting axis transverse to the central axis with at least one planar stop surface and a cutting edge projecting from the at least one planar stop at a right angle and capable of cutting bone. The applicant has invokes U.S.C. 112 6<sup>th</sup> paragraph regarding "means for" language in claim 1. However, the examiner is unable to find in the specification a definite description of the "means for" language in the specification. The examiner is unclear if the gear wheels, the wire and handles, or a combination of both are used as the "means for articulating" stated in claims 1, 20, and 22. Therefore the examiner is going to treat

the "means for" language as a limitation directed towards the gear wheels in claims 1, 20, and 22. The examiner recommends the applicant explicitly state in the specification what the "means for articulating" language in claim 1 is directed towards if the applicant still wants to invoke U.S.C. 112 6<sup>th</sup> paragraph. Regarding claims 2 and 9, Boynton discloses a device further comprising a shaft member connected to the head section of the elongated member and extending coaxially within the tubular portion of the elongated member. The shaft member and the head member are axially moveable relative to the tubular portion. Regarding claims 3 and 10, Boynton discloses a device wherein the shaft member includes a terminal end portion that projects beyond the proximal end of the elongate member. Regarding claims 4 and 11, Boynton discloses a device further comprising a cap member that is removably attached to the terminal end portion of the shaft member. The cap member includes a first surface that is engagable with the proximal end portion of the elongate member and an oppositely disposed second surface capable of receiving repetitive impacts. Regarding claim 23, Boynton discloses a device as discussed above wherein the elongate member includes a head section further including a ratchet wheel fixed to the head section having a first set of ratchet teeth capable of engaging a second set of ratchet teeth located on the distal end of the tubular member.

Figure 1



***Allowable Subject Matter***

4. Claims 18 and 19 are allowed.
5. Claims 21 and 24-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 06/08/2007 have been fully considered but they are not persuasive. The applicant's argument that Boynton does not disclose a stop surface is not persuasive. The claims only require at least one planar stop surface, which means the device only requires one surface capable of stopping the device from removing material. The examiner believes the surface is capable of stopping the device from removing surface located below the surface, which meets the limitations of the claims. The applicant's argument that Boynton does not disclose a cutting edge projecting from a stop surface is not persuasive. The examiner is interpreting projecting from as being similar to extending from the stop surface. The claims do not contain limitations requiring the cutting blade to be directly connected to the stop surface and projecting from the same stop surface. Therefore, the examiner believes that the cutting surface is projecting/extending from a stop surface. The applicant's argument that Boynton does not disclose a shaft member and a head member axially moveable relative to the tubular portion is not persuasive. The examiner believes that Boynton discloses a device wherein the shaft moves along its longitudinal axis relative to the tubular member and the head moves about an axis of rotation relative to the tubular member. The claims do not limit the axis the shaft member and the head member are moving along or about.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW

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